

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of Miko Telephone Communications, Inc. and its sole owner and President Margaret Currie, to determine whether it has violated the laws, rules and regulations governing: 1) payment of surcharges to the Commission, 2) authorized operation in California, 3) providing accurate information to the Commission and 4) the manner in which California consumers are switched from one long distance carrier to another.

Investigation 04-03-016
(Filed March 16, 2004)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

1. Summary

This ruling and scoping memo (Scoping Memo) sets forth the procedural schedule, the issues, and the procedural requirements for respondents Miko Telephone Communications, Inc. and its sole owner and President Margaret Currie to defend themselves against the allegations set forth in the above Order Instituting Investigation (OII).

This OII was issued by the Commission on March 16, 2004 and service on the respondent was certified on March 24, 2004. On April 8, 2004, the undersigned administrative law judge (ALJ) issued a ruling setting a prehearing conference for Tuesday, May 11, 2004 and directing the filing of prehearing conference statements on May 6, 2004.

On April 16, 2004, a response to the Commission's OII was filed on behalf of Miko Telephone Communications, Inc. by the Helein Law Group, LLP. The response states Miko is insolvent and no longer in business, and will not resume business now or at any time in the future.¹ The respondent did not file a prehearing conference statement on May 6, 2004 and did not appear at the prehearing conference on May 11, 2004.

In the procedural schedule set here, we provide the Commission's Consumer Protection and Safety Division (CPSD) an opportunity to supplement its report. The report should address Miko's response to CPSD's March 4, 2004 data request, for which Miko asserts it responded on March 23, 2004, and provide any additional information CPSD believes is relevant to the issues in the proceeding. The respondents are provided a date by which they can file affirmative testimony to CPSD's original and supplemental report, and an evidentiary hearing is set for July 19, 2004.

2. Category of Proceeding

The OII categorized this investigation as an adjudicatory proceeding and set the matter for evidentiary hearings. The OII also advised that this categorization is appealable under the procedures in Rule 6.4 of the Commission's Rules of Practice and Procedure (Rule 6.4). No party has filed a timely appeal.

¹ The response states that the law firm is no longer retained as Miko's counsel, but was asked as a professional courtesy if it would (1) inform the Commission of Miko's dissolution and (2) request that its authorization and carrier code be cancelled.

3. Presiding Officer

Pursuant to Rule 6(c), Assigned Commissioner Wood designates ALJ Walwyn as the presiding officer.

4. Schedule

At the prehearing conference, the attorney for CPSD recommended that the ALJ issue a Presiding Officer's Decision (POD) without holding evidentiary hearings because Miko is insolvent and apparently does not intend to conduct further business in California. The undersigned ALJ stated that a scoping memo would be issued and that CPSD could then pursue its recommendation by motion. The respondents have failed to appear, although they were properly served.

In reviewing the staff report, we find that it does not address events past March 11, 2004. In its April 19 response, Miko asserts that it filed a response to CPSD's March 4, 2004 data request on March 23, 2004. Staff's report states it intends to provide a supplemental report, and the OII provides this opportunity in its order. Therefore, rather than have CPSD pursue its recommended motion, we direct that CPSD address Miko's referenced March 23, 2004 filing, as well as any other additional information it wishes to introduce as part of its direct showing, in supplemental testimony.

A short evidentiary hearing will be held on July 19, 2004. Staff will move its reports into evidence and will make a witness available to answer any questions the presiding officer may have. The ALJ anticipates asking staff if any funds are still owed to customers and, if so, what actions can be taken to recover this money. Given the failure of the respondents to appear, it is anticipated that the presiding officer will be chiefly concerned with staff's recommendations on

the sanctions to be imposed, including any aggravating or mitigating factors staff believes the Commission should consider.

The respondents are put on notice that their failure to appear means they do not contest any of the charges made against them in the OII. If the respondents, or any of them, desire to appear at the hearing, they must file a motion at least 10 days before the hearing showing good cause to allow them to contest the charges despite their failure to appear timely. The motion must be accompanied by the respondents' proposed prepared testimony.

Therefore, we adopt the following schedule:

Friday, June 25, 2004	CPSD shall serve supplemental testimony
Wednesday, July 7, 2004	Respondents shall serve testimony addressing the allegations and evidence advanced by CPSD in its staff report and attachments, as well as any supplemental testimony CPSD may serve on June 4, 2004.
Wednesday, July 14, 2004	CPSD may serve reply testimony
Monday, July 19, 2004 commencing at 10:00 a.m.	Evidentiary hearings at the Commission's Hearing Rooms, 505 Van Ness Avenue, San Francisco, California ²

² A briefing schedule will be set at the conclusion of hearings and a Presiding Officer's Decision due 60 days after the submission of briefs.

Our goal is to resolve this case as soon as possible. We anticipate that the resolution will not exceed 12 months from the date of filing the investigation, pursuant to Pub. Util. Code § 1701.2(d).³

5. Scope of the Proceeding

The scope of the proceeding is set out in the OII. Ordering Paragraph 7 of the OII directs CPSD to monitor consumer complaints made against Respondents and to bring additional evidence of any alleged harmful business practices by Respondents to our attention. The OII directs CPSD to file a motion to amend the OII, with supporting declarations, in order to add additional respondents or to raise additional charges in the OII.

6. Service List

The service list for this proceeding is attached to this Scoping Memo as Appendix A. CT Corporation System, respondents' designated agent for service in California, is shown at the Los Angeles address where service of the OII was certified. The Helein Law Group is placed in the Information Only category. Parties are required to serve all pleadings, testimony, etc. on the Appearances, State Service, and Information Only categories.

7. Communications with Decisionmakers (*Ex Parte* Communication)

Pursuant to Pub. Util. Code § 1701.2(b), *ex parte* communications are prohibited in this proceeding. For example, a party or any other person who has a financial interest in this proceeding is prohibited from speaking with a decisionmaker on a substantive issue in this case. (See Pub. Util. Code §§ 1701.1,

³ Section 1701.2(d) states that adjudication cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline.

1701.2 and Rules 5 and 7 of the Commission's Rules of Practice and Procedure for specific rules on *ex parte* communications.)

IT IS RULED that:

1. The schedule and issues to be addressed are set forth in this Scoping Memo, unless subsequently modified by Assigned Commissioner or Assigned Administrative Law Judge (ALJ) directive.
2. If respondents fail to serve testimony before or at the time designated in the schedule set forth above, they will have waived the right to present an affirmative case at the evidentiary hearings.
3. ALJ Walwyn is the presiding officer in this proceeding.
4. The service list for this proceeding is attached as Appendix A.
5. Pursuant to Pub. Util. Code § 1701.2(b), *ex parte* communications are prohibited.

Dated June 8, 2004, at San Francisco, California.

/s/ CARL WOOD
Carl Wood
Assigned Commissioner

/s/ CHRISTINE M. WALWYN
Christine M. Walwyn
Administrative Law Judge

APPENDIX A
SERVICE LIST IN I.04-03-016

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***** **INFORMATION ONLY** *****

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CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated June 8, 2004, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.